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Supreme Court of the United States

OCTOBER TERM, 1956

No. ~~109~~ 7

J. D. CONLEY, STANLEY MOORE, SR., GEORGE L. CARTER AND B. A. WATSON, PETITIONERS,

vs.

PAT. J. GIBSON, GENERAL CHAIRMAN OF LOCALS 6051 AND 28, RAYMOND DICKERSON, DIVISION CHAIRMAN OF LOCALS 6051 AND 28, BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, A. F. OF L., ET AL.

PETITION FOR CERTIORARI FILED MAY 24, 1956

CERTIORARI GRANTED OCTOBER 8, 1956

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DESIGNATION OF RECORD ON APPEAL

(Filed, March 23, 1955)

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

J. D. CONLEY, STANLEY MOORE, SR., GEORGE I. CARTER and B. A. WATSON,
Plaintiffs,

versus

PAT J. GIBSON, GENERAL CHAIRMAN OF LOCALS 6051 and 28, RAYMOND DICKERSON, DIVISION CHAIRMAN OF LOCALS 6051 and 28, BROTHERHOOD OF RAILWAYS AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES, A. F. of L. AND LOCAL 28 of the BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES,
Defendants.

CIVIL ACTION FILE No. 8443

Pursuant to Rule 75 (a) of the Federal Rules of Civil Procedure, the Plaintiffs-appellants hereby designate for inclusion in the record on appeal to the United States Court of Appeals for the Fifth Circuit, taken by notice of appeal filed March 23, 1955, the following portions of the record, proceedings, and evidence in this action:

1. The complaint.

2. The answer and motion to dismiss of the defendants.

3. The Judgment.

4. Notice of Appeal.

5. This designation.

DENT, FORD, KING & WICKLIFF,
By (s) ROBERSON L. KING,
(Roberson L. King),
Attorneys for Appellants J. D. Conley, Stanley Moore, Sr., George L. Carter and B. A. Watson.

Address: 618 Prairie Avenue,
Houston, Texas.

CAPTION

In the United States District Court for the Southern District of Texas, Holding Sessions at Houston.

J. D. Conley, Stanley Moore, Sr., George L. Carter and B. A. Watson,
vs. No. 8443 Civil Action.
Pat J. Gibson, General Chairman of Locals 6051 and 28, et al.

Be It Remembered: That in the above entitled and numbered cause, lately pending in said Court, in which Order of Dismissal was rendered at the Regular February 1955 Term of said Court, to-wit: On the 21st day of

March A. D. 1955, the Honorable T. M. Kennerly, Judge, of the United States District Court for the Southern District of Texas, presiding the following proceedings were had, to-wit:

COMPLAINT

(Filed, Aug. 21, 1954)

(Title Omitted)

I.

The jurisdiction of this Court is invoked pursuant to Title 28, United States Code, Section 1331, this being a suit in equity under the Constitution and laws of the United States, viz., the Fifth Amendment of the said Constitution and—45 United States Code, Section 151 et seq. more commonly known as the National Railway Labor Act, wherein the matters in controversy exceeds the sum or value of three thousand dollars ($3,000.00) exclusive of interests and costs. The right here sought to be redressed are: (1) the right to be represented by the exclusive collective bargaining representative of the class without discrimination because of race or color which is required as a duty by the National Railway Labor Act of all bargaining representatives who are the exclusive representatives of a class or craft of employees; (2) the right not to be discriminated against by the action of the Union in allowing certain jobs to be abolished, where such jobs are not in fact abolished but certain plaintiffs and those whom they represent have lost their previously accrued seniority; (3) the right to retain seni-

ority consistent with other employees who are members of the union, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, of the Clerks Class or Craft, who are members of the white race, whose jobs have not been abolished and who have not because of any pretended abolition of jobs lost their seniority status; (4) the right not to be discriminated against because of race or color in the exercise of seniority rights as secured by the National Railway Labor Act 45 U. S. C. A. Section 151 et seq. and the 5th Amendment to the United States Constitution; (5) the right to receive non discriminatory treatment by the Union under union security provisions of the Union Shop Agreement between the Union and the carrier, Texas and New Orleans Railroad Company, employer of plaintiffs, which last mentioned agreement became effective the 1st day of March 1953, which said agreement further requires plaintiffs to maintain membership in the Union under penalty of discharge; (6) the right to have all legitimate grievances considered by the union and the right to be treated by said union with the utmost candor, fairness, and straight forwardness.

II.

This is a complaint and a proceeding for a permanent injunction enjoining the defendants and each of them, their agents, servants, representatives, officers and members from refusing to afford to plaintiffs representation on the collective bargaining level, equal to that afforded to other employees within the class or craft who are persons of the white race; and from refusing to protect plaintiffs, and those whom they represent, from discrimination resulting from curtailment of their seniority rights; and further enjoining defendants and each of them, their agents,

servants, representatives, officers and members from refusing or failing to protect plaintiffs and those whom they represent from discriminations resulting from discharge from employment by reason of any pretended abolition of jobs, when persons of the white race in the same craft have not, under identical circumstances, been discharged.

III.

This is a proceeding for a declaratory judgment pursuant to Title 28, United States Code, Section 2201, for the purpose of determining questions in actual controversy between the parties, to-wit:

(a) Whether defendants or any of them, their agents, servants, representatives, officers or members may refuse to discharge the obligation imposed upon said union by the National Railway Labor Act;

(b) Whether defendant or any of them, their agents, servants, representatives, officers or members owe a duty to plaintiffs and those whom they represent, under the National Railway Labor Act and the 5th Amendment to the U. S. Constitution, of protection from discriminatory discharge and curtailment of seniority standing, and from in anywise permitting any kind of job insecurity practices to be practiced toward plaintiffs and those whom they represent in this action;

(c) Whether defendants or any of them, their agents, servants, representatives, officers or members, national or local can lawfully, under the terms of the Union Shop Contract of March 1, 1952, which provides for compulsory union membership be compelled to accept membership in said union on terms different from that which is applic-

able to persons or employees of the white race of the same class; whether plaintiffs, under the Union Shop Agreement, aforesaid, may lawfully under the Constitution and laws of the United States be segregated into a local union of the craft in which they are cut off from and denied effective representation on a par equal to that afforded to white employees who are members of the same craft or class;

(d) Whether defendants and each of them under the Constitution and the National Railway Labor Act can refuse to afford to plaintiffs and those whom they represent in this action representation equal to that afforded members of the white race, employees of the Texas and New Orleans Railroad Company, at its Freight House in Houston, Harris County, Texas, inasmuch as all of said employees belong to the craft or class of Steamship Clerks, Freight Handlers and Section Employees, and all amployees are members of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees;

(e) Whether the defendants and each of them may refuse because of race or color to bargain collectively on behalf of plaintiffs in an effect to assure to them continued employment and continued accrual of seniority privileges in the face of the alleged and purported lease agreement between the T & NO Railroad Company, Southern Pacific Line in Texas, in such manner as they have done for the Clerks of the class or craft aforesaid;

(f) Whether there is a valid and subsisting lease agreement between the Texas and New Orleans Railroad Company and the Southern Pacific Transport Company with regard to the leasing of a portion of the docks owned

by the T & NO Railroad Company to the Southern Pacific Transport Company and what the terms of said agreement contain;

(g) Whether some of the persons whom plaintiffs represent may, upon rehiring be required to place their union membership with the International Brotherhood of Teamsters, Local 968 since they are doing Freight Handler's work.

IV.

This is a class action pursuant to Rule 23 (a) of the Federal Rules of Civil Procedure brought by the individual plaintiffs on behalf of themselves and other persons similarly situated, i.e., Negro citizens of the United States and of the State of Texas, interested in this suit, members of the craft or class of Steamship Clerks, Freight Handlers, Express and Station Employees, and members of Local 6051 of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, who seek admission into Local 28 and the abolition of Local 6051 under 45 U. S. C. A. Sec. 152 (a) and who have been denied adequate representation by their collective bargaining agent. The said persons constitute a class too numerous to be brought individually before the Court, but there are common questions of law and fact involved herein, common grievances arising out of common wrong, and common relief for the plaintiffs. The interests of the said class are fairly and adequately represented by the plaintiffs. This is a class action pursuant to Rule of Civil Procedure agent the individual defendant Raymond Dickerson, and as representing all other persons similarly situated who are members of Local 28, of the Brotherhood of Railway Steamship Clerks,

Freight Handlers, Express and Station Employees; this is a class action pursuant to Rule 23 (a) of the Federal Rules of Civil Procedure against the individual defendant Pat J. Gibson, and as representing all other persons similarly situated who are members, officers, agents or representatives of the international organization of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, A. F. of L. The interests of the class are fairly adequately represented by the plaintiffs.

V.

The named individual plaintiffs and all of whom they represent are employees of the Texas and New Orleans Railroad Company and/or the Southern Pacific Transport Company, both corporations doing business in Houston, Harris County, Texas, and they are members of the Negro Race and members of Local 6051 of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

VI.

The defendant Local 28 is a Labor union, subordinate organization of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees and its membership is constituted and composed solely of persons of the white race. The defendant Local 28 is a component element of the exclusive bargaining agent of the employees of the Clerks; Freight Handlers Craft employees at the T & NO Freight House and is in fact the sole exclusive bargaining agent of the employees thereof. The defendant Local 28 has been designated exclusive bargaining agent pursuant to the terms of the

National Railway Labor Act 45 U. S. C. A. 151 et seq. The named individual defendant, Pat J. Gibson is District Chairman of Locals 6051 and 28 of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.

VII.

The T & NO Railroad Company and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees entered into a union shop Contract, which contract by its terms is made a part of these pleadings as if recited herein, which became effective on the 1st day of March, 1953, providing in Sec. 1 thereof as follows, to-wit:

" . . . . all employees of the carrier now or hereafter subject to the rules and working conditions agreement between the parties hereto, shall, as a condition of their continued employment . . . . become members of the organization party to this agreement representing their craft or class. . . ."

The said Brotherhood for various purposes of collective bargaining maintains two separate locals composed of employees who work at the Houston Freight House of the Texas and New Orleans Railroad Company. The aforesaid Local 6051 is constituted and composed solely of members of the Negro race and the aforesaid Local 28 is constituted and composed solely of members of the White race. That plaintiffs and those whom they represent have been compelled to join Local 6051 solely because they are members of the Negro race and solely for the purpose of affording to plaintiffs a representation inferior and different to that offered to members of the

white race of the craft who are admitted to membership in Local 28. The Union Shop Agreement aforesaid further provides in Section 4 as follows, to-wit:

"Nothing in this agreement shall require an employee to become or to remain a member of the organization in such membership is not available to such employment upon the same terms and conditions as are generally applicable to any other member . . ."

It is also provided in the National Railway Labor Act, 45 U. S. C. A. Section 152 (a), as follows, to-wit:

the union and the carrier shall be permitted "(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective dates of such agreements, which ever is the later, all employees shall become members of the labor organization representing their craft or class. Provided, that no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other members . . ."

Notwithstanding the above contract and statutory provision plaintiffs and all of those whom they represent, exclusive of those who have been compelled to join the International Brotherhood of Teamsters, Local 968, have been compelled to accept membership in Local 6051 which is a condition of membership not generally applicable to other members, and have segregated into Local 6051, an inferior unit, solely on the basis of race alone, which act of segregation constitutes a discriminatory denial to said plaintiffs of due process of law guaranteed by the 5th

Amendment to the Constitution of the United States of America.

VIII.

Prior to on or about the 1st day of May 1954, plaintiffs and all persons whom they represent by this action were employed by the Texas and New Orleans Railroad Co. as freight handlers (Stevedores) at the Houston Freight House of the said T & NO Railroad Company. Prior to said aforementioned date the exclusive bargaining agent representing plaintiffs, and others interested in this action as plaintiffs was the defendant Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees. As such bargaining agent the Brotherhood had entered into a collective bargaining agreement with the T & NO Railroad Co. effective November 1st, 1939 under which agreement plaintiffs have worked since such effective date, and which agreement is made a part of these pleadings as if recited therein. On or about the 1st day of May 1954 there was passed on the bulletin board at the Houston Freight House of the T & NO Railroad Company, in a conspicuous place, a notice stating that a certain number of jobs were being abolished, approximately forty-five, of which abolition of jobs plaintiffs and those whom they represent had no notice as required under collective bargaining agreement between the T & NO Railroad Company and the Brotherhood aforesaid. That said union defendants, nor any of them, did not attempt to notify plaintiffs or appraise them of the condition under which these discharges had occurred, but suffered them to transpire without in any manner coming to the aid of plaintiffs and those whom they represent; and did decline to hear plaintiffs on this question of discharging repeatedly and without reason. Defend-

ants did state on some occasion that the said abolition of jobs and discharging was due to the leasing of certain portions of the docks at the Houston Freight House by the T & NO Railroad Company to the Southern Pacific Transport Company and that there was nothing that could be done. Plaintiffs state on information and belief that no other jobs were abolished except those held by Negroes.

IX.

Plaintiff further allege, on information and belief that the said Southern Pacific Transport Company is but an extension of the T & NO Railroad Company, a subsidiary of said T & NO, owned, controlled by it to carry on the business of T & NO as the agent of said T & NO and that the two are in truth but one corporation.

X.

Plaintiffs further allege that in fact the aforementioned jobs, which were all freight handlers jobs, were not abolished, for persons were immediately hired to perform said jobs, doing the same type and class of work that plaintiffs and those whom they represent had done prior to their discharge. That many persons of the white race were hired on these jobs and subsequently some of those who had been previously fired, who are Negroes and who are interested as plaintiffs in this action were rehired, with no seniority, and junior to all the white persons who had been previously hired but who had never before performed this work. That some of the other plaintiffs and those who they represent have been displaced from their permanent jobs and placed in Break Out, none of the white employees represented by the Brotherhood have

been so discharged or displaced from permanent jobs. Plaintiffs further allege on information and belief that none of the employees, members of the white race, classified as clerks have been displaced from their permanent jobs, had their jobs abolished nor compelled to join the International Brotherhood of Teamsters Local 968, though a portion of the Freight House where such clerks perform their duties was the subject matter of the purported lease between the T & NO Railroad Company and the Southern Pacific Transport Company.

XI.

Plaintiffs and those whom they represent further allege that said acts constituted a planned course of conduct designed to discriminate against them because of their race or color. That by reason of the said acts their threatened continuation and the refusal of defendant or any of them to give to plaintiffs protection or any protection from said discrimination equal to that afforded to members of the white race of the craft represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, defendants and each of them have breached the statutory duty imposed by 45 U. S. C. A. 151 (a) [Fourth] which duty is to protect plaintiffs from any discrimination on the basis of race or color. Plaintiffs have further been deprived of their rights and property without due process of law as condemned by the Fifth Amendment of the United States Constitution. In consequence of said breach of duty on the part of defendants and lack of them, the denial of plaintiffs, constitutional rights, in refusing to protect plaintiffs and those whom they represent against the aforementioned course of discrimination on account of

race and color, plaintiffs have been damaged in the amount of Seventy Five Thousand Dollars ($75,000.00).

XII.

Each of the defendants is under a duty to discharge his duties in conformity with the Constitution, laws and public policy of the United States.

XIII.

The plaintiffs and each of them are suffering irreparable injury for which there is no adequate remedy at law by the acts of defendants here complained of and will continue to suffer such injury unless a permanent injunction is granted by this Court.

Wherefore, Plaintiffs respectfully pray this Court that upon filing of this complaint, as may appear proper and convenient to the Court, the Court advance this cause on the docket and order a speedy hearing of this action according to law and that this Court upon said hearing:

1. Adjudge, decree and declare the rights and other legal relations of the parties to the subject matter here in controversy in order that the said declaration shall have the force and effect of a final judgment.

2. That this court discover the manner in which any purported lease between the T & NO Railroad Company and the Southern Pacific Transport Company affects the rights of plaintiffs herein and those whom they represent; a discovery of the manner in which the Collective Bargaining Agreement of November 1, 1939 between the T & NO Railroad Company and the Brotherhood of Rail-

way and Steamship Clerks, Freight Handlers, Express and Station Employees has been applied.

3. Enter a final judgment and decree (a) declaring that the segregation of Negro employees of the craft represented by the Brotherhood into a separate local is illegal under the National Relations Act, and is contrary to the Union Shop Agreement of March 1, 1953, and permanently and perpetually enjoin the Brotherhood, its agents, officers, representatives or any of them from requiring plaintiffs to maintain membership in the Union by joining Local 6051 the segregated local (b) that the defendants, and each of them, their servants, agents, members and officers are permanently and perpetually restrained and enjoined from refusing to bargain for plaintiffs and those whom they represent on a basis equal to that afforded to white employees, clerks, who are also represented by the Brotherhood of Railway and Steamship Clerks (c) that the defendants, and each of them, their servants, agents, members and officers are permanently and perpetually restrained from refusing to protect plaintiffs and those whom they represent from discriminatory action because of race or color from whatever quarter emanating.

4. That this Court issue a permanent injunction forever restraining the defendants, and each of them, their agents, servants, officers and members from permitting, or engaging in any discrimination toward plaintiffs and those whom they represent, from allowing plaintiffs jobs to be abolished summarily, and from allowing the discharge of plaintiffs and those whom they represent, the termination of their seniority on account of race or color when employees of the white race, clerks, are not so affected; and that the defendants be restrained from being or purporting to act as exclusive collective bargaining

agent with the T & NO Railroad Company concerning grievances, labor disputes, wages, rates of pay, and hours of employment so long as any acts of discrimination continue, and unless and until the defendant Labor Union, its agents, servants, officers and members, give these plaintiffs and all of the other Negro employees whom they represent, equality of representation on any phase of labor negotiations.

5. Plaintiffs further pray that this Court award them judgment for damages in the amount of Seventy-Five Thousand Dollars ($75,000.00).

6. Plaintiffs further pray that this Court allow them their costs herein and grant such other, further or additional relief as may appear to the Court to be equitable and just.

(s) J. D. CONLEY,
(s) STANLEY MOORE, SR.
(s) GEORGE L. CARTER,
(s) B. A. WATSON,
Plaintiffs.
DENT, FORD, KING & WICKLIFF,
By (s) ROBERSON L. KING,
(Roberson L. King),
Attorneys for Plaintiffs.

618 Prairie,
Houston 2, Texas.

The State of Texas,
County of Harris.

We, J. D. Conley, Stanley Moore, Sr., George L. Carter and B. A. Watson, each being duly sworn according to law, on oath, deposes and says that we have each read the foregoing complaint by us subscribed; that we know

the matters and things therein contained, that the matters and things stated by us as true are true, and those stated upon belief and information we verily believe to be true.

(s) J. D. CONLEY,
(J. D. Conley),
(s) STANLEY MOORE, SR.,
(Stanley Moore, Sr.),
(s) GEORGE L. CARTER,
(George L. Carter),
(s) B. A. WATSON,
(B. A. Watson).

Subscribed and sworn to before me this 21st day of August, 1954.

(s) PHARNICE MARIE HARRIS,
(Pharnice Marie Harris),
Notary Public in and for
Harris County, Texas.

My Commission expires June 1, 1955.

MOTION TO DISMISS

(Filed, Nov. 5, 1954)

(Title Omitted)

The above-named defendants respectfully move the Court to dismiss this action upon the following grounds:

1. It appears on the face of the Complaint that this Court has no jurisdiction over the subject matter of the action for the reason that by an Act of Congress known as the Railway Labor Act (45 U.S.C. Section 151 et seq.) the National Railroad Adjustment Board is given exclusive jurisdiction of disputes involving the application or interpretation of collective bargaining agreements in the railroad industry such as the agreements upon which plaintiffs purport to base their claims.

2. It appears on the face of the Complaint that there is a defect of an indispensable party defendant. While plaintiffs seek injunctive relief and a declaratory judgment concerning alleged rights in connection with their employment with the Texas and New Orleans Railroad Company based upon agreements existing between said railroad company and the Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, they have failed to make the Texas and New Orleans Railroad Company a party defendant to this action.

3. The allegations of the Complaint concerning the Union Shop Agreement between the Texas and New Orleans Railroad and the defendant union fail to present a justifiable issue.

4. The Complaint fails to state a claim upon which relief can be granted.

Respectfully submitted,

FULBRIGHT, CROOKER, FREEMAN, BATES & JAWORSKI,

Second National Bank Building,
Houston 2, Texas.

By (s) CHESTER M. FULTON,
MULHOLLAND, ROBIE & HICKEY,

620 Tower Building,
Washington 5, D. C.

By (s) EDW. J. HICKEY, JR.,

Attorneys for Defendants.

Dated: November 5, 1954.

Service of a copy of the foregoing Motion at 2:20 p. m. o'clock P. M. on this 5 day of November, 1954, is hereby admitted.

DENT, FORD, KING AND WICKLIFFE,
By (s) ALOYSIUS M. WICKLIFF,
Attorneys for Plaintiffs.

MEMORANDUM OPINION OF COURT

(Dated March 16, 1955)

(Title Omitted)

Dent, Ford, King & Wickliff, (Roberson King), of Houston, Texas; for Plaintiffs.

Fulbright, Crooker, Freeman, Bates & Jaworski (Chester M. Fulton), of Houston, Texas; and Mulholland, Robie & Hickey, of Washington, D. C.; for Defendants.

KENNERLY, District Judge:

Plaintiffs J. D. Conley, Stanley Moore, Sr., George L. Carter and B. A. Watson allege in their complaint that they bring this suit under the National Railway Labor Act (Title 45, Section 151, U.S.C.A.).

They say they are citizens of the United States and of the State of Texas, and that they are negro employees of the Texas & New Orleans Railroad Company and/or the Southern Pacific Transport Company, corporations doing business in Houston, Harris County, Texas. That

they are members of a national labor union or organizations known as the Brotherhood of Railroad & Steamship Clerks, Freight Handlers, Express and Station Employees (for brevity called "Brotherhood"). That the Brotherhood has in Houston, Texas, a local union or subsidiary composed of white men and known as Local 28, and a similar local union or subsidiary composed of negro men known as Local 6051.

Plaintiffs sue Pat J. Gibson as General Chairman of Locals 6051 and 28, and Raymond Dickerson, Division Chairman thereof. They also sue Local 28. Whether the Brotherhood is sued is not entirely clear, but I am assuring that it is a party defendant herein.

Defendants have moved to dismiss alleging lack of jurisdiction, defect of parties defendant, that Plaintiffs do not in their complaint present a justifiable issue and that such complaint fails to state a claim upon which relief can be granted. This is a hearing under Local Rule 25 of such motion.

1. Plaintiffs allege that Local No. 28 is the bargaining agent of the members of the Brotherhood and has been so designated in pursuance of such Act. That Local 28 has negotiated with such Railroad Company, et al., a working agreement to which Plaintiffs refer in their complaint.[1]

Reference is made to Plaintiffs' complaint as a whole. While Plaintiffs' allegations are not at all clear, the nature of Plaintiffs' case and the relief sought appears to be stated in paragraph three of Plaintiffs' complaint (their

[1]A copy of such agreement does not appear to be among the papers in the case.

prayer) in which they pray that the Court enter a final decree—

(a) Declaring that the segregation of negro employees of the craft represented by the Brotherhood into a separate local is illegal under the National Labor Relations Act, and is contrary to the Union Shop Agreement of March 1, 1953, and permanently and perpetually enjoin the Brotherhood, its agents, officers, representatives or any of them from requiring plaintiffs to maintain membership in the Union by joining Local 6051, the segregated local—

(b) That the Defendants, and each of them, their servants, agents, members and officers are permanently and perpetually restrained and enjoined from refusing to bargain for plaintiffs and those whom they represent on a basis equal to that afforded to white employees, clerks, who are also represented by the Brotherhood of Railway and Steamship Clerks—

(c) That the defendants, and each of them, their servants, agents, members and officers, are permanently and perpetually restrained from refusing to protect plaintiffs and those whom they represent from discriminatory action because of race or color from whatever quarter emanating.

In paragraph four of their prayer they also pray—

That this Court issue a permanent injunction forever restraining the defendants, and each of them, their agents, servants, officers and members from permitting, or engaging in any discrimination toward plaintiffs and those

whom they represent, from allowing plaintiffs jobs to be abolished summarily, and from allowing the discharge of plaintiffs and those whom they represent, the termination of their seniority on account of race or color when employees of the white race, clerks, are not so affected; and that the defendants be restrained from being or purporting to act as exclusive collective bargaining agent with the T. & N. O. Railroad Company concerning grievances, labor disputes, wages, rates of pay, and hours of employment so long as any acts of discrimination continue, and unless and until the defendant Labor Union, its agents, servants, officers and members give those plaintiffs and all of the other negro employees whom they represent, equality of representation on any phase of labor negotiations.

In paragraph five of their prayer they also pray—

Plaintiffs further pray that this Court award them judgment for damages in the amount of Seventy-five Thousand Dollars ($75,000.00).

Citing Moore v. Illinois Central R. Co., 312 U.S. 630; Order of Railway Conductors v. Pitney, 326 U.S. 561; Slocum v. Delaware, L. & W. R. R. Co., 339 U.S. 239; Order of Railway Conductors v. Southern R. Co., 339 U.S. 255; Hattenbaugh v. Airline Pilots Assn. International, 189 F. (2d) 319; Hayas v. Union Pacific Co., 84 F/ (2d) 337, cert. den. 340 U.S. 942, 88 F. Supp. 168; Kendall v. Pennsylvania Railroad Co. (D.C. Ohio), 94 F. Supp. 875; Van Zandt v. Railway Express Agency (D.C. N.Y.) 99 F. Supp. 520; Butler v. Thompson (C.A. 8), 192 F/ (2d) 831, Defendants say in support of their Motion to Dismiss and their claim that this Court is without jurisdiction. That since Plaintiffs raise no question of the lawfulness of the

selection of Local 28 as a bargaining agent, nor of the validity of such bargaining agreement, jurisdiction is not here. That the Federal Courts are not charged with the duty of policing parties in the performance of collective bargaining agreements under such Act. They press the point that this case should be dismissed for lack of jurisdiction. I think and conclude that Defendants' position is well taken and their Motion to Dismiss should be granted.

The case of Moore v. Illinois Central Railroad Company, supra, standing alone may throw some doubt upon this conclusion, but that case does not stand alone. It has been modified and limited by the many cares cited. The present ruling is well stated by the Court of Appeals for this circuit in Hattenbaugh, et al. v. Airline Pilots Assn., supra, where it is said:

The Congress did not, by the Railway Labor Act, grant jurisdiction to the Federal Courts to afford relief for breaches of performance of collective bargaining agreements. Appropriate quasi-judicial tribunals have been established for that purpose. Slocum v. Delaware L. & W. R. Co., 339 U.S. 239, 70 S. Ct. 577, 94 L. Ed. 795. It is only when collective bargaining agreements are unlawfully entered into, or when the agreements themselves are unlawful in terms or effect, that Federal Courts may act. The question of federal jurisdiction being decisive, it is not necessary to consider the other contentions made by the parties. The dismissal of the cause for want of jurisdiction was correct.

Plaintiffs apparently stand upon Steele v. Louisville & Nashville Railroad Co., 323 U.S. 193, and Turnstall v. Brotherhood, 323 U.S. 211, but those cases are fully con-

sidered and differentiated by the Court of Appeals of the Ninth Circuit in Hayes v. Union Pacific R. Co., cited above.

Because of my conclusion that this Court is without jurisdiction, it is not necessary to discuss the other question presented.

Let an order be drawn and presented dismissing the case.

The Clerk will file this opinion.

(S) T. M. KENNERLY,
United States District Judge.

ORDER OF DISMISSAL

(Dated March 21, 1955)

Filed 22nd day of March, 1955

In the United States District Court for the Southern District of Texas, Houston Division.

J. D. Conley, Stanley Moore, Sr.; George L. Carter and B. A. Watson, Plaintiffs,

v.

Pat J. Gibson, Central Chairman of Locals 6051 and 28, Raymond Dickerson, Division Chairman of Locals 6051 and 28, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, A. F. of L. and Local 28 of the Brotherhood

of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Defendants.

Civil Action File No. 8443.

This cause came on to be heard on the motion of defendants, Pat J. Gibson, General Chairman of Locals 6051 and 28, Raymond Dickerson, Division Chairman of Locals 6051 and 28, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, A. F. of L. and Local 28 of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, to dismiss the above-entitled action, and it appearing to the Court that this Court has no jurisdiction over the subject matter of the action, it is,

Ordered, that the motion to dismiss is hereby granted, that this action be and it is hereby dismissed, and that defendants recover their costs.

Dated March 21, 1955.

(S) T. M. KENNERLY,
United States District Judge.

Approved as to Form:

DENT, FORD, KING & WICKLIFF,
By ROBERSON L. KING,
Attorneys for Plaintiffs.

FULBRIGHT, CROOKER, FREEMAN, BATES & JAWORSKI,
By CHESTER M. FULTON,
Attorneys for Defendants.

NOTICE OF APPEAL

(Filed, March 23, 1955)

In the United States District Court for the Southern District of Texas, Houston Division.

J. D. Conley, Stanley Moore, Sr.; George L. Carter and B. A. Watson, Plaintiffs,

vs.

Pat J. Gibson, Central Chairman of Locals 6051 and 28, Raymond Dickerson, Division Chairman of Locals 6051 and 28, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, A. F. of L. and Local 28 of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Defendants.

Civil Action File No. 8443.

To the said Honorable Court:

Notice is hereby given that J. D. Conley, Stanley Moore, Sr., George L. Carter and B. A. Watson, Plaintiffs above named hereby appeal to the United States Court of Appeals for the Fifth Circuit from the order and judgment sustaining the above named Defendants' motion to dismiss said cause for want of jurisdiction entered on the 21st day of March, 1955.

DENT, FORD, KING & WICKLIFF,

By (s) ROBERSON L. KING,
(Roberson L. King),
Attorneys for Appellants J. D. Conley, Stanley Moore, Sr., George L. Carter and B. A. Watson.

Address: 618 Prairie Avenue,
Houston, Texas.

COST BOND ON APPEAL

(Filed, March 29, 1955)

(Title Omitted)

We, the undersigned, jointly and severaly acknowledge that we and our personal representatives are bound to pay to Pat J. Gibson, General Chairman of Locals 6051 and 28, Raymond Dickerson, Division Chairman of Locals 6051 and 28, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, A. F. of L. and Local 28 of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, Defendants, the sum of Two Hundred Fifty Dollars ($250.00).

The condition of this bond is that, whereas the Plaintiffs have appealed to the Court of Appeals for the Fifth Circuit by notice of appeal filed March 23, 1955, from the judgment of this Court entered March 21, 1955, if the Plaintiffs shall pay all costs adjudged against them if the appeal is dismissed or the judgment affirmed or such costs as the appellate Court may award if the judgment is modified, then this bond is to be void, but if the Plaintiffs fail to perform this condition, payment of the amount of this bond shall be due forthwith.

(s) J. D. CONLEY,
(J. D. Conley),
Southern Pacific Freight Sta.

(s) STANLEY MOORE, SR.,
(Stanley Moore, Sr.),
Southern Pacific Freight Sta.

(s) GEORGE L. CARTER,
(George L. Carter),

Southern Pacific Freight Sta.

(s) B. A. WATSON,
(B. A. Watson),
Southern Pacific Freight Sta.

UNITED STATES FIDELITY AND GUARANTY COMPANY,

By (s) IRENE F. RISDON,
Attorney in Fact, Surety.

(Seal)

CLERK'S CERTIFICATE

United States of America,
Southern District of Texas.

I, V. BAILEY THOMAS, Clerk of the United States District Court for the Southern District of Texas, in the Fifth Circuit and District aforesaid, do hereby certify the foregoing to be a true and correct copy of the record and all proceedings had in the case, as called for in the Designation for Contents of Record on Appeal, Page 1 of this Transcript, in Cause No. 8443 on the Civil Docket of said Court at Houston entitled J. D. Conley, Stanley Moore, Sr., George L. Carter and B. A. Watson vs. Pat J. Gibson, General Chairman of Locals 6051 and 28, et al., as the same now appears on file and of record in my office.

To Certify Which, Witness my hand and the Seal of said Court at Houston, in said District, this the 26th day of April, A. D., 1955.

V. BAILEY THOMAS,
Clerk, United States District Court, Southern District of Texas.

(Seal)

By W. PAUL HARRISS,
(W. Paul, Harriss),
Deputy.

[fol. 29a] [Caption omitted]

[fol. 30] MINUTE ENTRY OF ARGUMENT AND SUBMISSION—November 30, 1955

(Omitted in printing)

[fol. 31] [File endorsement omitted]

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 15566

J. D. CONLEY, STANLEY MOORE, SR., GEORGE L. CARTER, and B. A. WATSON, Appellants,

versus

PAT J. GIBSON, General Chairman of Locals 6051 and 28, et al., Appellees

Appeal from the United States District Court for the Southern District of Texas

OPINION—January 31, 1956

Before Hutcheson, Chief Judge, and HOLMES and RIVES, Circuit Judges

PER CURIAM:

The judgment appealed from is affirmed. Slocomb v. Delaware, L. & W. R. Co., 339 U. S. 239; Hettenbaugh v. Air Line Pilots Association, 189 F. (2) 319.

[fol. 32] IN UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 15566

J. D. CONLEY, STANLEY MOORE, SR., GEORGE L. CARTER and B. A. WATSON

versus

PAT J. GIBSON, General Chairman of Locals 6051 and 28, et al.

JUDGMENT—January 31, 1956

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Texas, and was argued by counsel;

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellants, J. D. Conley, Stanley Moore, Sr., George L. Carter and B. A. Watson, and the surety on the appeal bond herein, United States Fidelity and Guaranty Company; be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

[fols. 33-42] Petition for rehearing covering 4 pages filed February 20, 1956 omitted from this print.

It was denied, and nothing more by order March 15, 1956.

[fols. 43-46] IN UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[Title omitted]

MINUTE ENTRY OF ORDER DENYING REHEARING—March 15, 1956

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 47] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 48] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1956

No. 109

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed October 8, 1956

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.